

Gai (Migration) [2024] AATA 102 (18 January 2024)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Xiaolei Gai
REPRESENTATIVE:	Mr Tao Jiang (MARN: 1577079)
CASE NUMBER:	2213902
HOME AFFAIRS REFERENCE(S):	BCC2015/1336479
MEMBER:	Rachel Westaway
DATE:	18 January 2024
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa: • cl 820.211(2)(a) of Schedule 2 to the Regulations; and • cl 820.221(1)(a) Schedule 2 to the Regulations, and • reg 2.03A.

Statement made on 18 January 2024 at 4:26pm

CATCHWORDS

MIGRATION – Partner (Class UK) visa – Subclass 820 (Partner) – Federal Circuit and Family Court remittal – genuine and continuing relationship – previously married and divorced, and then remarried after sponsor’s marriage and divorce with another man – financial, household and social aspects of relation and nature of commitment – length of relationship – detailed, consistent and compelling evidence – sponsor’s non-disclosure of criminal convictions to applicant given no weight – decision under review remitted

LEGISLATION

*Migration Act 1958 (Cth), ss 5F, 65, 359(2)
Migration Regulations 1994 (Cth), rr 1.15A(3), 2.03A, Schedule 2, cl 820.211(2)(a), 820.221(1)(a)*

CASE

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant applied for the visa on 8 May 2015 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl 801.211(2)(a) because they did not meet the requirements that they were the spouse or de facto partner of the sponsor as defined under sections 5F and 5CB of the Act. Consequently, they found that the applicant did not meet clause 820.211.
4. The applicant appeared before the Tribunal on 18 January 2024 at 9.30am to give evidence and present arguments. The Tribunal also received oral evidence from Yuehua Yang, the sponsor and Master Hongxun Gai, their son: The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
5. The applicant was represented in relation to the review.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

7. History

The First Tribunal application

8. The applicant first applied for a Partner (Subclass 820) visa on 8 May 2015. This visa application was refused by the Department on 21 July 2016 on the basis that the applicant did not meet the requirements that they were the spouse or de facto partner of the sponsor as defined under sections 5F and 5CB of the Act, respectively. The delegate found that the applicant did not meet subclause 801.211(2)(a).
9. On 29 July 2016, the applicant applied for review of the Department's decision to refuse to grant him a Partner visa.

10. Invitation to provide further information under s.359(2) of the Act

11. On 29 May 2017 the Tribunal wrote to the applicant under s.359(2) of the Act inviting the applicant to provide further information to support her claims that she is in a spouse or de facto relationship with the sponsor.
12. The letter provided the applicant with 14 days to provide the requested information or request an extension of time to respond. The letter also stated that if the information was not received within the period allowed or as extended, the Tribunal may make a decision on the review without taking any further action to obtain the information, and that the applicant

would lose any entitlement they might otherwise have had under the Act to appear before the Tribunal to give evidence and present arguments.

13. On 14 June 2017 the applicant's representative provided the following documents to the Tribunal in response to the s.359(2) request:
 - Written submissions from the representative addressing the sponsor and applicant's relationship dated 14 June 2017.
 - 31 pages of bank statements in the name of the sponsor and applicant between 30 July 2017 and 31 May 2017.
 - Tax invoices and receipts in the name of the applicant.
 - Company documents in the name of sponsor, applicant and a third party.
 - Photos together, with friends and family and with their son.
 - Form 888 from Liuyi Ji dated 2 June 2017.
 - Form 888 from Manning Gratwick dated 3 June 2017.
 - Form 888 from Xiaoji Chi dated 1 June 2017.
 - Translated relationship documents from the sponsor and applicant dated 9 June 2017.
 - Chinese divorce order between applicant and sponsor dated May 25, 2010.
 - Australian divorce order between sponsor and previous husband dated 25 November 2014.
 - Letter from the sponsor's father dated 1 August 2016.
 - Translated Chinese birth certificate for the sponsor dated 7 January 2010.
 - Applicant's Chinese passport.
 - Applicant's translated Chinese birth certificate/notarial certificate dated November 21, 2008.
 - Applicant and sponsor's son's Chinese passport.
 - Applicant and sponsor's son's translated birth certificate/notarial certificate dated November 14, 2008.
 - Translated Chinese household register.
14. On 28 August 2017 the applicant's representative provided the following documents to the Tribunal in supports of their application:
 - Reference letter for the applicant from his wife's business partner at 'Waurm Ponds Fish and Chips' from Mark Gratwick dated 25 August 2017.

- Sponsor's tax return for the year 2017.
 - Applicant's tax return for the year 2017.
 - Barwon Health medical record for orthopaedics and physiotherapy in the applicant's name dated 22 October 2015.
 - Medical letter from Dr Khan at Point Cook Superclinic dated 8 October 2015.
 - Xray results, liver function tests and blood test results from Barwon Health.
 - Barwon Health orthopaedics discharge summary for the applicant.
 - Barwon Health inpatient registration dated 8 October 2015 for the applicant.
 - Barwon Health emergency records for the applicant.
15. On 4 September 2017 the applicant's representative provided the following documents to the Tribunal in supports of their application:
- Written submissions from the representative dated 4 September 2017.
 - Statement from the applicant dated 29 August 2017.
 - Statement from the sponsor regarding allegations put to her at hearing.
 - Letter from lawyers Galbally Rolfe addressed to sponsor dated 29 July 2014.
 - School of holistic massage certificate in the sponsor's name dated February 15, 2011.
 - AFP invoice in the sponsors name dated 30 August 2017.
16. On 17 September 2017 the applicant's representative provided the Tribunal with a copy of the sponsor's National Police Certificate dated 8 September 2017.
17. The Tribunal (different constituted) made a decision on 16 November 2017 to affirm the review application on the basis that the Tribunal was not satisfied that, at the time of the decision, the parties were in a spousal relationship. Therefore, the applicant did not meet cl.820.211 and cl.820.221.

Judicial review of the Tribunal's decision

18. The applicant lodged an application for judicial review of the Tribunal's decision with the Federal Circuit & Family Court of Australia on 28 November 2017.
19. On 18 August 2022, the application was remitted back to the Tribunal. This reasoning was "The Tribunal took into account an irrelevant consideration and engaged in illogical reasoning as it failed to reveal how non-disclosure of the prior conviction impacted on commitment in the relationship. The Tribunal's written reasons do not logically disclose how truthfulness or disclosure about criminal convictions before the parties married is relevant to the applicant and sponsor's commitment to one another. Objectively, whether the sponsor had shared information about the prior convictions with the applicant is not relevant to the applicant and sponsor's commitment to one another."

“Further, it is unclear what findings the Tribunal actually made. The mere expression of difficulty, doubt or concern does not equate to making a finding in relation to the mandatory considerations in the Regulations. This too demonstrates a failure to actively consider the mandatory considerations, particularly those relating to reg 1.15A(3)(d).”

20. That remitted review application forms the application currently under review before the Tribunal.

The current Tribunal matter (Case Number 2213902)

21. The applicant applied for review of the Department’s decision with the Tribunal on 19 August 2022.
22. The applicant was represented in their review application.
23. On 21 July 2023 the applicant’s representative provided the following documents to the Tribunal in supports of their application:
- The sponsor and applicant’s son’s Australian passport.
 - RACV motor insurance in sponsor’s name.
 - Translated Chinese medical records for the applicant’s mother.
 - Sponsor’s superannuation statement for 1 July 2020 – 30 June 2021.
 - Relationship history statement from the applicant dated September 12, 2022.
 - Company tax return for YHM AUSTCHINA PTY LTD for the year 2021.
 - Company tax return for YHM AUSTCHINA PTY LTD for the year 2022.
 - Relationship history statement from the sponsor dated September 12, 2022.
24. On 26 December 2023 the applicant’s representative provided the following documents to the Tribunal in supports of their application:
- Photos of gifts between the applicant and sponsor from Christmas and New Years.
 - The applicant’s fathers translated discharge letter from Shandong University Qilu Hospital dated 15 November 2023.
25. On 26 December 2023 the applicant’s representative provided the following documents to the Tribunal in supports of their application:
- Joint bank statements dated 1 April 2023 to 29 September 2023.
 - Photos of the applicant and sponsor by themselves and with family and friends.
 - Joint electricity bills dated 22 December 2023, 24 November 2023, 23 October 2023, 21 September 2023, and 21 August 2023.
 - The review applicants tax return for the year 2023.

Invitation to provide further information under s.359(2) of the Act

26. On 24 July 2023, the Tribunal wrote to the applicant under s.359(2) of the Act inviting the applicant to provide further information to support his claims that he was in a spouse or de facto relationship with the sponsor.
27. The letter provided the applicant with 14 days to provide the requested information or request an extension of time to respond. The letter also stated that if the information was not received within the period allowed or as extended, the Tribunal may make a decision on the review without taking any further action to obtain the information, and that the applicant would lose any entitlement they might otherwise have had under the Act to appear before the Tribunal to give evidence and present arguments.
28. On 7 August 2023 the applicant submitted the following in response to the s.359(2) request:
- RACV motor insurance in sponsor's name.
 - Sponsor's superannuation statement for 1 July 2020 – 30 June 2021.
 - Translated Chinese medical records for the applicant's mother.
 - Translated relationship history statement from the sponsor dated September 12, 2022.
 - Translated relationship history statement from the applicant dated September 12, 2022.
 - Company tax return for YHM AUSTCHINA PTY LTD for the year 2021.
 - Company tax return for YHM AUSTCHINA PTY LTD for the year 2022.
 - The sponsor and applicant's son's Australian passport.
 - Letter from Geelong High School in relation to applicant's son dated 14 September 2022.
 - Application letter from Kardinia International college dated 6 September 2022.
 - Psychologist letter from Christine Goh at Mind Health Care for sponsor dated 11 July 2023.
 - Mental Health plan and referral letter for sponsor from Geelong City Medical dated 27 August 2021.
 - Mental Health plan for sponsor from Geelong City Medical dated 3 July 2023.
 - Belmont Bulkbilling clinic letter for team care arrangement and Referral letter from Dr Yoong for the sponsor dated 16 June 2023.
 - Chronic disease management plan from Dr Yoong dated 16 June 2023.
 - University of Melbourne acceptance letter for the applicant.
 - Applicant's tax return for year 2018.
 - Applicant's tax return for year 2019.

- Applicant's tax return for year 2020.
- Applicant's tax return for year 2021.
- Applicant's tax return for year 2022.
- Petition letter from the applicant's son dated 7 November 2023.
- Letter in regard to fish and chips from customers dated 17 June 2021, 2 August 2021.
- Form 888 from Mark Gratwick dated 13 September 2022.
- Form 888 from John Paddison dated 10 September 2022.
- Company tax return for YHM AUSTCHINA PTY LTD for the year 2018.
- Company tax return for YHM AUSTCHINA PTY LTD for the year 2019.
- Company tax return for YHM AUSTCHINA PTY LTD for the year 2021.
- Joint energy bills from November 2022 – July 2023.
- Joint bank account statement dated 2017 – 2023.
- Photos together and with friends.
- Sponsor's tax return for year 2018.
- Sponsor's tax return for year 2019.
- Sponsor's tax return for year 2020.
- Sponsor's tax return for year 2021.
- Joint gas bill dated 2017 – 2022.
- Joint electricity bill dated 2022.

29. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

30. The issue in the present case is whether the applicant is the spouse or de facto partner of the sponsor as defined under 5B and 5F of the Act.

Background

31. The applicant is a 43-year-old Chinese national. He was previously married to the sponsor, and they have a child together.
32. The sponsor, Yuehua Yang is 42 years old, she was born in China and is an Australian citizen by grant.

33. They claimed to have first met in Qingdao, China on 16 November 2004 and committed to a shared life together on 30 March 2015. They were married in Melbourne on 6 May 2015.

The Department application

34. As noted above, the original decision of the Department to refuse to grant the applicant a Partner visa on 21 July 2016.
35. The applicant provided the following documents in support of his application:
- Joint NAB bank statement from 1 August 2015 – 29 February 2016.
 - Contract of sale of business in the name of the applicant and sponsor dated 15 June 2016.
 - Joint LUMO energy bill dated 23 July 2015 – 24 March 2016.
 - Ambulance Victoria membership letter in sponsor's name.
 - Child's school letter addressed to applicant and sponsor dated 5 September 2015.
 - Photos together and with friends and family.
 - Form 888 from Gary John Chippendale dated 14 March 2016.
 - Form 888 from Mark Joseph Gratwick dated 31 March 2014.
 - Written statement from Mark Joseph Gratwick dated 15 March 2016.
 - Written statement from applicant dated April 20, 2015.
 - Written statement from sponsor dated May 7, 2015.
 - Translated notarial certificate for the applicant's child dated November 14, 2008.
 - Australian marriage certificate dated 6 May 2015.
 - Translated notarial certificate for the applicant dated November 21, 2008.
 - Applicant's Chinese passport.
 - Sponsor's Australian passport.
 - Australian divorce order in the name of the sponsor and her previous husband dated 25 November 2014.
 - Applicant's National Police certificate dated 23 March 2016.
 - Translated notarial certificate for the applicant's criminal history dated March 10, 2016.

The Department decision

36. The delegate of the Department made a decision to refuse to grant the applicant the Partner visas on 21 July 2016, on the basis that they found the applicant was not the spouse or de facto partner of the sponsor as defined under sections 5F and 5B of the Act, respectively.

37. **Hearing Evidence**

38. The applicant confirmed he first met his wife in 2006 in China and they were introduced by friends. He was at a home of a female friend called Li Fei. The meeting was for the purposes of introducing the couple to each other. Li Fei's family were friends with the applicant's parents.
39. The relationship developed over six months and both the applicant and sponsor were living in China at the time. They resided about 10 minutes' drive from one another.
40. They married in China in 2006 and they had their son in 2007.
41. The applicant and sponsor in their separate evidence discussed how the applicant worked in Singapore for a food company in order to earn more money and following the wedding, the sponsor moved to live with the applicant's parents. The applicant sent money to his parents to provide for his wife and son. She did not have a good relationship with his parents and also wanted to broaden her opportunities so it was agreed that she would apply for a student visa in 2008 to study hairdressing in Australia. She left her son with his paternal grandparents and her husband remained in Singapore working.
42. The couple explained that the distance between them caused the marriage to fail and the sponsor met an Australian man, they divorced, and she remarried. He sponsored her on a partner visa. However, the sponsor stated that her then husband met a Thai woman on holidays in Thailand and this caused their relationship to end. They were together for four years.
43. The applicant stated that during this period he returned to China and cared for his son. He also learnt his former in-laws had carbon monoxide poisoning and he cared for them. He stated that in this period he had limited contact with the sponsor as they were divorced but he communicated through her sister in China.
44. In 2014 her parents' health started to improve and the couple started to speak. He stated that his care of her parents prompted the relationship to recommence.
45. She came back to China to visit her son and they met once.
46. On 12 February 2015 the applicant applied for a tourist visa and brought his son to Australia. He stated he resided at his former wife's house but in separate bedrooms. However, the relationship developed quickly and whilst he returned to China for five days to apply for a parent visa and see his parents, they decided to recommence their relationship and the applicant returned to Australia.
47. The applicant confirmed there is no contact with his wife's former husband and he has never met him.
48. The home they resided in was owned by the sponsor and located in Garden Street Geelong. However, several rooms were rented out, so the couple decided to rent a property in Foster Street Geelong, and they lived as a family unit and did not share the home with others.
49. They have subsequently returned to Garden Street as the tenants have moved out. He has now moved back to Garden Street and has lived there for a year.
50. The applicant and sponsor provided consistent detail supported by oral evidence from their son regarding their daily routines.

51. The applicant does most of the housework including laundry and mows the lawns. They share transport of their son to school with the applicant responsible for the morning shift and the sponsor picks their son up.
52. They discussed their ownership of their fish and ship shop and the responsibilities this entails.
53. They discussed and were aware of each other's financial situation.
54. The couple attend school events together and this again was supported by the son of the couple.
55. The couple were able to discuss what they eat and what they make for their son's lunch at school. They discussed with consistency social gatherings and mutual friends and recent visits with friends to restaurants and the meals were able to be described in detail. Their son attended these events and also independently confirmed the detail provided.
56. They discussed their favourite Chinese restaurant called Ju Fu Yuan in Pakington Street and the regularity of their visits and what they would order.
57. The applicant, sponsor and son all independently drew a picture of the layout of their home for the Tribunal and discussed with consistency where they slept.

Whether the parties are in a spouse or de facto relationship

58. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
59. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

60. The applicant and sponsor were married (for a second time) on 6 May 2015 and have provided a copy of their ceremonial marriage certificate. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

Are the other requirements for a spouse relationship met?

Financial aspects of the relationship

The applicant provided the following as evidence of the financial aspects of the relationship:

- Joint energy bills from November 2022 – July 2023.
- Joint bank account statement dated 2017 – 2023.
- Joint gas bill dated 2017 – 2022.
- Joint electricity bill dated 2022.
- 31 pages of bank statements in the name of the sponsor and applicant between 30 July 2017 and 31 May 2017.
- Written submissions from the representative addressing the sponsor and applicant's relationship dated 14 June 2017.

Nature of the household

The applicant provided the following evidence of the nature of the household:

- Significant and consistent detail from the applicant, sponsor and witness at hearing regarding their daily routines and living arrangements.
- Mail as detailed in the evidence which is addressed to both the applicant and sponsor at the same address.
- Written witness statements confirming that the couple live together s husband and wife in a genuine relationship.

Social aspects of the relationship

The applicant provided the following evidence of the social aspects of the relationship:

- Petition letter from the applicant's son dated 7 November 2023.
- Form 888 from Mark Gratwick dated 13 September 2022.
- Form 888 from John Paddison dated 10 September 2022.
- Photos together and with friends.
- Photos together, with friends and family and with their son.
- Form 888 from Liuyi Ji dated 2 June 2017.
- Form 888 from Manning Gratwick dated 3 June 2017.
- Form 888 from Xiaoji Chi dated 1 June 2017.

Nature of persons' commitment to each other

The applicant provided the following evidence of the nature of their commitment to the sponsor:

- Relationship history statement from the sponsor dated September 12, 2022.
- Relationship history statement from the applicant dated September 12, 2022.

Any other circumstances of relationship

- Chinese divorce order between applicant and sponsor dated May 25, 2010.
- Australian divorce order between sponsor and previous husband dated 25 November 2014.

61. The Tribunal has considered the length of time the couple have been together since the visa application and the evidence they have now been able to accumulate. Further, the oral evidence of their teenage son was consistent and compelling to support their claim of a genuine relationship. Whilst it is unusual that a couple should divorce and remarry and that this may have raised concerns for the delegate, with the passage of time and the accumulated evidence, the applicant and sponsor have provided strong evidence to support their case. The Tribunal acknowledges the first Tribunal's decision and the grounds in which this was remitted. The Tribunal has placed no weight on the sponsor's previous activities which she did not disclose to her husband. Whilst this is a significant event which many may find important to disclose, the second Tribunal has considered this in relation to all of the other evidence provided.
62. The Tribunal is satisfied, based on the oral testimony of the applicant, sponsor and their son and the documentary evidence of the parties that they share their day-to-day expenses and combined their financial affairs to a degree that is commensurate with a couple in a genuine and continuing spousal relationship.
63. The Tribunal has considered the evidence before it of the parties' living arrangements. There are many letters and tax returns and utility statements over the course of many years indicating the couple reside at the same address. The applicant stated that he undertook specific housework chores which was corroborated by the sponsor and their son. The applicant and his witnesses provided illustrations of their home and where they slept and described household appliance. On the evidence before it, the Tribunal is satisfied that the parties' household is commensurate with that of a couple in a genuine and ongoing spousal relationship.
64. There is significant detail provided by the applicant and sponsor and their son about their social outings with friends in Australia and written witness statements. There are letters from the applicant's son's school addressed to both the applicant and his wife. The Tribunal accepts the evidence before it that the applicant and sponsor present themselves as husband and wife.
65. The applicant and sponsor have provided detailed and consistent evidence of their long-term commitment to each other. They are aware of their respective parent's health issues and have over the course of the years cared for them. They jointly care for their son and have also built up their business together. The applicant and sponsor are named as next of Kin to each other on medical records with Barwon Health. Given the applicant's knowledge of his wife's investments and her health issues and his support for her when she is unable to undertake work, the Tribunal finds that this relationship is based on a degree of companionship and emotional support which would be expected for parties who have a mutual commitment to a shared life to the exclusion of all others and that the relationship is genuine and continuing.
66. The Tribunal has considered all the circumstances of the parties' relationship both individually and cumulatively. The Tribunal finds the weight of evidence supports a finding that at the time of application the parties were in a genuine and continuing spousal relationship and that the parties continue to be in a spousal relationship at the time of

decision pursuant to s.5F(2). The Tribunal also regarded the applicant, sponsor and their son to be credible and reliable witnesses.

67. Requirements of cl.802.211(2)

68. Clause 820.211(2) requires at the time of application, the applicant meets subclauses (a), (c) and (d).
69. For the reasons set out above, the Tribunal is satisfied that the applicant is the spouse of the sponsoring partner as required by s.5F(2) at the time of application. Accordingly, the Tribunal is satisfied that the applicant was the spouse of the sponsoring partner who is an Australian citizen at the time of application, and therefore the applicant meets the requirements of cl.820.211(2)(a).
70. Cl.820.211(2)(c) which requires that the applicant was, at the time of application, sponsored by the sponsor, where such person has turned 18; or where they have not, by the sponsor's parent or guardian who has turned 18 and is either an Australian citizen, permanent resident or eligible New Zealand citizen (as defined in reg 1.03 of the Regulations).
71. The Tribunal is satisfied that the applicant was sponsored by his sponsoring partner, that she is an Australian citizen, and had turned 18 at the time of the sponsorship and at the time of application.
72. Accordingly, the Tribunal is satisfied that the applicant meets the requirements of cl.820.211(2)(c).
73. Cl.820.211(d) applies if the applicant was not the holder of a substantive visa at the time of application. The Tribunal is satisfied that the applicant was the holder of a substantive visa at the time of application (a visitor visa) and therefore the requirements of cl.820.211(2)(d) do not apply.
74. For the above reasons the Tribunal is satisfied that the applicant meets the requirements of cl.820.211(2)(a), (c) and (d).
75. The Tribunal is satisfied that the applicant continues to meet the requirements of cl.820.211(2) and therefore meets the requirements of cl.820.221(1)(a).
76. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

77. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
 - cl 820.211(2)(a) of Schedule 2 to the Regulations; and
 - cl 820.221(1)(a) Schedule 2 to the Regulations, and
 - reg 2.03A.

Rachel Westaway
Senior Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).